

UNAPPROVED - DRAFT

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, March 9, 2007

**Department of Health Professions
6603 W. Broad Street, 5th Floor
Richmond, Virginia 23230
Board Room 1**

CALL TO ORDER: A meeting of the Virginia Board of Dentistry was called to order at 9:05 a.m.

PRESIDING: Paul N. Zimmet, D.D.S., President

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.H.
Edward P. Snyder, D.D.S.
James D. Watkins, D.D.S.
Glenn A. Young, D.D.S.

MEMBERS ABSENT: Millard D. Stith, Jr.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Sandra Whitley Ryals, Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Catherine Chappell, Administrative Staff Assistant

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

QUORUM: With nine members of the Board present, a quorum was established.

PUBLIC COMMENT: Dr. Vandervort addressed the Board regarding his request for an interpretation of the requirement for Board certification to perform cosmetic procedures. He stated that he holds both a medical license and a dental license and that he practices cosmetic surgery and oral maxillofacial surgery. He asked the Board to allow him to perform the dental cosmetic procedures without Board certification because he is able to perform those procedures under his medical license.

**APPROVAL OF
MINUTES:**

Dr. Zimmet asked if the Board members had reviewed the minutes from the December 8, 2006 meeting. Dr. Watkins moved to approve the minutes of the December 8, 2006 meeting as written. The motion was seconded and passed.

Dr. Levin moved to approve the Minutes of the Conference Call of January 26, 2007. The motion was seconded and passed.

**Presentation on Oral
and Maxillofacial
Surgery**

Dr. Pirok introduced Dr. Abubaker, chairman of the Oral and Maxillofacial Surgery program at Virginia Commonwealth University (VCU). Dr. Abubaker provided a Power Point presentation on oral and maxillofacial surgery and the training program at VCU.

Reports:

Regulatory-Legislative Committee. Dr. Snyder advised that the Committee met on March 2nd to discuss:

- proposed regulations for hygienists to administer local anesthesia and nitrous oxide. He noted that Dr. Hunt from the VCU School of Dentistry provided an outline of coursework for educating dental hygienists to administer local anesthesia and nitrous oxide which the Committee used to develop the proposed regulations. Dr. Snyder advised that after much discussion the proposal does not require posting of another credential since there is no way for there to be a uniform certification. He stated that the Committee decided that the Board could address any concerns that arise about qualifications through its current regulations. He noted the proposed regulations are on the agenda for adoption.
- Dr. Snyder reported that the Committee considered what action if any should be taken on establishing two levels of dental assistant since the proposed legislation was not advanced. He reported that the Committee asked staff to develop a more definitive proposal for the next Committee meeting.
- The need for a guidance document on advertising was discussed and the Committee concluded that the regulations provide sufficient guidance. He noted that the Committee is recommending regulatory action to update references to outdated documents.
- He also reported that the Committee is recommending that the Board issue a Notice of Intended Regulatory Action to include a requirement for informed consent be added to the

recordkeeping regulations.

Credentials Committee. Ms. Sissom noted that the Credentials Committee had reviewed several cases which are on the agenda for Board action. She advised that the Committee will be discussing radiation safety program guidelines when it meets following the Board meeting.

SCDDE Annual Meeting. Dr. Pirok thanked the Board for allowing him to attend the meeting. He noted that credentialing of continuing education presenters was discussed. He commented that discussion was held regarding ongoing difficulties in financing dental clinics used for student training. Additionally, Dr. Pirok noted that while Virginia allows board members to be adjunct professors at the dental school, this option is not available in the other states represented at the meeting.

Board of Health Professions. Dr. Gokli reported on the January 18, 2007 Board of Health Professions (BHP) meeting. She advised that:

- AARP has requested to join with BHP to ensure continued competence of healthcare licensees in Virginia. BHP will be forming a task force to study the issue.
- BHP received a summary of legislative activity, an update on the Agency's anticipated move and an update on the sanctions reference study.
- a task force had begun researching the addition of criminal background checks and noted that such implementation would increase Enforcement's workload. Further study by the task force was requested.
- performance measures for the Agency are that 90% of disciplinary cases are to be resolved within 250 days, that positive ratings for customer satisfaction should be 94-97%, and that 90% of licensure applications should be completed within 30 days.
- the Board of Health Professions was within budget.

SRTA. Dr. Watkins reported on his recent telephone conference call with SRTA. He stated that Laura Slaughter, executive director, had been dismissed and that Kathleen White was serving as interim director. He expressed his concern as to the lack of communication from SRTA to the Board, noting that he had been unaware of (1) security issues with respect to candidate

information and financial data, (2) negotiations with CITA, and (3) problems with computer simulated examinations.

Dr. Zimmet asked for comments as to how to respond to SRTA's lack of communication in this regard. The Board requested that Ms. Reen draft a letter of concern regarding the lack of communication to be signed by Dr. Zimmet as President of the Board, Dr. Watkins as Board Representative to SRTA, and Ms. Reen as Executive Director of the Board.

**Remarks by Sandra
Whitley Ryals, Director
of the Department of
Health Professions**

Ms. Ryals thanked the Board for the opportunity to address them and provided the following update:

- Governor's Health Reform Commission. She advised that four work groups and several subgroups would report to the full commission in May. She recommended that the Board visit the Health and Human Resources website at www.hhr.virginia.gov to view more information. She noted that public hearings would be held regarding (1) quality, transparency, and prevention; (2) access to care; (3) workforce shortages; and (4) long term care needs.
- Virginia Performs. Ms. Ryals indicated that a presentation to the Board would be made over the next few months. Specifically she noted three key performance measures/goals: processing applications within 30 days; achieving high levels of customer satisfaction rates; and reducing the time to complete disciplinary process with respect to patient care cases. She indicated that Dr. Elizabeth Carter was leading the review of statistical data and that Emily Wingfield was leading the review of enforcement and compliance. She asked that the Board members work towards reaching these goals and suggested that the Board review www.vaperforms.virginia.gov for further explanation.
- Relocation. Ms. Ryals advised that the Agency was scheduled to move in mid-August to the Perimeter Building on the Circuit City campus.
- 211 Initiative. Ms. Ryals advised that the provider information program had been implemented throughout the state and would be evaluated in April. She planned to report the findings at the next Board meeting.

**LEGISLATION AND
REGULATIONS:**

Report on the 2007 Session of the General Assembly. Ms. Yeatts presented a report on legislative action with respect to the Agency. She noted the following:

- HB 1682 will require that investigative file information be subject to review by the complainant. Closure letters must be explicit regarding probable cause and closing of cases.
- HB 1963 will grant authority to licensed physician assistants to prescribe Schedule II through VI controlled substances.
- While HB 2157 currently applies only to the Board of Medicine and requires that notices and orders that do not result in disciplinary action be removed upon written request of the licensee, Ms. Yeatts noted that the Board of Dentistry may wish to follow this procedure as well. Such information would continue to be public information but not posted on the website.
- HB 2212 allows the Board to summarily restrict a license until the licensee can be scheduled for an informal conference.
- The Board's requested revision to §54.1-2709 regarding dental licensure was signed into law by the governor.
- Additionally, provisions authorizing dental hygienists to administer topical oral fluorides ordered by a medical doctor was approved.
- SB1341 allows a patient to directly receive lab or examination reports.

Regulatory Actions Status Report. Ms. Yeatts advised that two dentistry regulatory actions were at the Secretary's Office awaiting approval. She noted that the revision to regulation 18VAC60-20, relating to the extension of time limit for general supervision was scheduled for fast track action.

Regulatory Actions.

- **Adoption of Proposed Regulations for Hygienists to Administer Local Anesthesia and Nitrous Oxide.** Ms. Yeatts presented the regulations advanced by the Regulatory/Legislative Committee. She pointed out that 18VAC60-20-81. B.1. and C.1. had been revised to include "dental or" before the words "dental hygiene program". Additionally, the Committee revised C.1.m. to add the words "and local anesthesia injections on patients" and delete ",including injections on live patients". The term "substantially equivalent" was clarified in D.1. by adding "in

hours of instruction and course content” between the words “equivalent” and “to”. F. was deleted in its entirety. Section 18VAC60-20-220 was further revised by adding the word “eligible” between “by” and “dental” and adding “in accordance with the requirements” after “hygienists” and deleting the words “who hold the certifications specified in”. Dr. Griggs asked for clarification of the term “certified” in Section 18VAC60-20-108. 3. The Board determined that the certification was for education, not something to be issued by the Board. Ms. Pace moved to accept the proposed regulation with revision by replacing “certified” in 18VAC60-20-108. C.3. and eligible” in 18VAC60-20-220.A.3. with “qualified”. The motion was seconded and carried. Ms. Yeatts advised that she will submit the proposal for administrative review.

- **Adoption of Fast Track Regulations for Public Participation Guidelines.** Ms. Yeatts advised that the Public Participation Guidelines had been revised to use the term “notification lists” rather than “mailing lists” to add definitions to clarify language. Additionally Part IV was revised to allow Ad Hoc Committees to exist for 18 months and beyond. Ms. Sissom moved that the Board accept the proposed revisions. The motion was seconded and carried. Ms. Yeatts advised that she will submit the proposal for administrative review.
- **Informed Consent NOIRA.** Dr. Levin advised that he had presented information on informed consent to the Regulatory/Legislative Committee. He advised that the Committee had agreed to ask the Board to issue a NOIRA to add informed consent to the recordkeeping requirements in regulation section 18VAC60-20-15. Ms. Pace moved that the Board issue a NOIRA. The motion was seconded and carried. Dr. Levin advised that he would work with staff on the preparation of the NOIRA.
- **Exempt action on Advertising.** Ms. Reen stated that in the Regulatory/Legislative Committee’s discussion of a guidance document to address advertising concerns, an audience member pointed out the edition of two documents that are referenced are not current, the reference to *Current Dental Terminology (Second Edition, 1995-2000)* in

regulation 18VAC60-20-180.E and the reference to the Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995, in regulation 18VAC60-20-180.F.4. The Committee agreed to request amendments. The amendment requests to reference the documents which were in effect when an advertisement was published rather than specify the publication by the year of publication. Ms. Yeatts advised that the regulations must cite current documents when they are incorporated by reference. The references would need to be updated as necessary. Dr. Levin moved that the Board amend regulation 18VAC60-20-180 to reflect updated references. The motion was seconded and carried.

**BOARD
DISCUSSION/ACTION:**

Serving as AADE Representative on DANB Board of Directors. Dr. Watkins advised that he was appointed a representative to DANB board and, while the term is usually for three years, he would be finishing a term for a replaced board member. He noted that DANB's mission was to increase the number of qualified dental assistants in the community. Dr. Watkins noted that in the event proposed regulation were developed regarding expanded duties of dental assistants, he would reclude himself from the voting.

Requiring Automatic External Defibrillators. Dr. Levin asked that the Board consider amending the regulations governing deep sedation to require automatic external defibrillators in every dental office in Virginia. He advised that this would be proactive action to put such devices in dental offices, especially in rural areas. After Board discussion, Dr. Zimmet requested that the Regulatory/Legislative Committee study the issue further and report back to the Board.

Anonymous Letter Inquiring about Direction of Dental Hygienists. Ms. Reen presented an anonymous letter regarding direction of more than two dental hygienists. The Board asked Ms. Reen to address the question in the next bulletin, and restate the regulations regarding direct and general supervision.

Question on use of Lasers by Dental Hygienists. Ms. Reen presented an e-mail regarding a dental hygienist's ability to use lasers. The Board advised that such duty can not be delegated to

dental hygienists under regulation 18VAC60-20-200. Ms. Sissom asked if any information was available on the product. Dr. Levin offered to contact Dr. Strauss for more information.

Requirements for Temporary Permits. Ms. Reen advised that staff had received a request for clarification of the phrase “is otherwise qualified” as used in section 54.1-2715(i). Ms. Reen advised that the individual had not yet applied for licensure and does not appear to meet the requirements for licensure. The Board instructed Ms. Reen to advise the individual to apply before a decision could be made regarding his qualifications.

Letter from Dr. Vandervort on OMS requirements. Ms. Reen presented a letter from Dr. Vandervort who requests clarification of the delineation between his practice of cosmetic surgery under his medical license and the practice of oral and maxillofacial surgery under his dental license. She also provided copies of the e-mails she had exchanged with Dr. Vandervort on the subject and noted that Dr. Vandervort reports that he is not eligible for the military exemption. She summarized his expectation to be that the Board would agree that he does not have to obtain certification from the Board of Dentistry to perform cosmetic procedures because he holds a medical license. Ms. Reen read §54.1-2701.1 which exempts physicians or surgeons from the dental statute unless he practices a dental specialty. The Board agreed that in order to perform cosmetic procedures under his dental license, he is required to obtain certification to perform cosmetic procedures.

**PRESENTATION ON
CITA**

Dr. Kinlaw presented a Power Point presentation to the Board on the formation of CITA and its examination program. He asked that the Board consider accepting the CITA examination for candidate applying for licensure.

**BOARD
DISCUSSION/ACTION:**

After Board discussion, Dr. Young moved that the Board accept the CITA results for examinations taken after September 1, 2007. The motion was seconded and carried. The Board discussed observing an upcoming examination possibly in North Carolina.

**EXECUTIVE
DIRECTOR’S REPORT:**

Staffing Update. Ms. Reen advised that Ms. Patricia Larimer left the Board staff in early February and that recruitment process was underway for filling the deputy executive director position. She further advised that she had been successful in creating a part-time wage case manager position and hoped to finalize the

position in the next few days.

Case Review Summary. Ms. Reen advised that two board members are assisting with case review activity to increase the flow of cases until the backlog is alleviated.

Additionally, she noted that the needed work for completing the OMS audits is still pending. Dr. Watkins agreed to assist with the review.

Relocation. Ms. Reen provided the Board with the proposed floor plan for the Agency relocation later in the year for their review and reference.

Upcoming Meetings. Ms. Reen noted that she and Dr. Gokli and Dr. Levin, would be making a presentation to the Richmond Dental Society meeting later in the Spring and she and Dr. Zimmet would be doing a presentation at the Virginia Dental Association annual meeting in the Summer.

**BOARD COUNSEL
REPORT:**

Mr. Casway updated the Board on the following recent litigation activity:

- The Board's case decision for Dr. Doe was upheld and Dr. Doe has appealed to the Court of Appeals. The case is scheduled to be held in late April.
- Dr. Lennon's appeal has been denied and the Board's order was confirmed.
- Dr. Zurmati has appealed his case to the Fairfax Circuit Court and it is scheduled for the end of April.

Closed Meeting. Dr. Levin moved that the Board enter into a closed meeting pursuant to §2.2-3711.A.28 of the Code of Virginia to deliberate to reach a discussion in the matter of a settlement proposed by the respondent for case numbers 85031, 85698, 86222 and 89736 . Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen, and Catherine Chappell attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene. Dr. Levin moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public

business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Levin moved that the Board reject the proposed settlement. The motion was seconded and carried.

Closed Meeting. Dr. Snyder moved that the Board enter into a closed meeting pursuant to § 2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel pertaining to decisions on applications as recommended by the Credentials Committee. Additionally, it was moved that Board counsel, Howard Casway and Board staff, Sandra Reen and Catherine Chappell attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene. Dr. Snyder moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Watkins moved to accept the Credentials Committee recommendations with respect to Case # 108171, # 111940, and #111957 with the finding that the applicant in 11197 withdrew his application. The motion was seconded and carried.

ADJOURNMENT

With all business concluded, the Board meeting was adjourned at 3:50 p.m.

Paul N. Zimmet, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date